

REMARKS

The above-identified patent application has been amended and reconsideration and re-examination are respectfully requested in accordance with the provisions of 37 CFR 1.116(a).

The Examiner objected to claim 1 because of the word "specifying" being repeated twice. Applicant has amended this claim and believes the objection has been overcome and should be removed.

The Examiner rejected claim 33 under 35 U.S.C. 102 as being unpatentable over Wagner. Applicant has made a slight amendment to claim 33 to more particularly point out the subject matter of claim 33.

Applicant has amended claim 33 to recite that the orders specify an exposure time for which the order is displayed for responses. This feature is neither described nor suggested in Wagner. The Examiner points to Wagner especially column 13, line 45 as providing this arrangement. At column 13, line 45 Wagner describes a time order.

However, Applicant submits that this time order is not the same as an exposure time interval for which the order can exist to receive responses. Specifically, Applicant directs the Examiner's attention to column 13, line 63 to column 14, line 10 where Wagner describes the processing for a conditional order other than a fill or kill order which the so-called time order would fall into. Wagner describes this processing as follows:

If the signal on line 232 from FIG. 7 is a conditional order other than a "fill or kill" order it is coupled to open order queue 334. That memory produces an output on line 336 which is time stamped at unit 338 and stored in master trade file 330. In addition, that information is coupled from time stamp unit 338 on line 340 to the matched trade information circuit 274 and order confirmation circuit 266 for processing as described earlier with relation to FIG. 8. Open order queue 334 also produces an output on line 342 to decision unit 344 to see if the conditions are satisfied. If they are not, they are returned through line 346 to open order queue 334 for reprocessing in an attempt to satisfy the condition. If and when the condition is satisfied, the output of circuit 344 on line 348 is coupled to the match decision circuit 248 in FIG. 8 for processing as described previously.

Wagner thus, uses the open order queue 334 to produce an output on line 342 to decision unit 344 to see if the conditions (e.g., the time order) are satisfied. If they are not, they (the orders) are returned to open order queue 334 for reprocessing in an attempt to satisfy the condition. Accordingly, the time order element of Wagner merely is used to signal how long to hold the order until the order is made active. It does not describe or suggest, an arrangement where an order has a time condition over which the order is displayed for responses. Therefore, claim 33 is neither described nor suggested by Wagner.

The Examiner rejected claims 1-20, 22, 24-32, 34-49, 51-55, and 57-64 under 35 U.S.C. 103(a) as being unpatentable over Wagner in view of Alaia et al.

The Alaia reference makes reference to two earlier provisional applications which the Examiner contends provides priority basis for the rejection contained therein. Applicant has not, at this point, examined the provisional applications and reserves its right to refute this claim of priority of the Alaia reference. Applicant contends that the combination of Wagner and Alaia neither describes nor suggests Applicant's invention for the reasons stated below.

Applicant's claim 1 as amended is patentably distinct over Wagner taken separately or in combination with Alaia. Applicant's claim 1 distinguishes over Wagner since Wagner does not describe or suggest entering an order... specifying an exposure time for which the order can be displayed for responses. This feature of claim 1 is not described by Wagner generally for the reasons discussed above in conjunction with claim 33. Applicant's claim 1 also recites that a response specifies a relative price with price improvement with the relative price being relative to a generally accepted indicator of a prevailing market price. This feature of claim 1 is also neither described nor suggested by Wagner or Alaia.

The Examiner admits that Wagner does not explicitly disclose a relative price with price improvement and relies upon Alaia for teaching this feature. The Examiner relies upon the testing bid feature described in Alaia. Applicant submits that the testing bid feature does not suggest the action of entering a response, the response specifying a relative price with price improvement with the relative price being relative to a generally accepted indicator of a prevailing market price. Alaia's bid testing relates to its flexible overtime feature. The processing described by Alaia is set forth at column 14, line 40 through column 15, line 15 and is set forth below.

The operation of the flexible overtime feature is illustrated in the flow chart in FIG. 12 for process 600. Bids are received at step 610 until it is closing time for the current lot. In step 620, a determination is made whether the current bid was submitted during a closing time trigger interval (i.e. in the trigger interval before the currently-scheduled closing time). If not, the process loops back to step 610 until the next bid is received. If so, the bid is then evaluated at step 630 to determine if it is "better" (by whatever quality parameter is selected, such as price) than the current best bid. If so, then the process goes to step 640, where the best bid is set equal to the current bid. Under the rule set implemented in this embodiment, a new best bid in the overtime trigger interval always triggers overtime--the process therefore proceeds to step 670, where overtime is initiated (or extended). If the current bid is not better than the best bid, the process proceeds from step 630 to step 650, where the determination is made whether the bid otherwise meets the overtime trigger criterion. In this case, the test is whether the bid is within some predetermined amount of a selected quality parameter (e.g. price) of the best bid. If it is, overtime is triggered (or extended). If not, the process loops back to step 610 to receive the next bid.

This feature of Alaia describes nothing more than processing to determine whether a received bid is better by some aspect than an existing best bid in the system to determine whether an auction should be extended with the so-called overtime feature. This does not describe the action of entering a response, the response specifying a relative price with a price improvement where the relative price is relative to a general indicator of prevailing market price. That is, the feature described by Applicant's claim 1 requires that the price explicitly define a price improvement relative to an accepted indicator of prevailing market price. No such teaching is described in Alaia. The only teaching described in Alaia is that a person enters a price and the system determines whether the price is better than a current price in the system. Alaia does not suggest a bid defined as a price with a price improvement relative to an accepted indicator of prevailing market price. Moreover, Alaia does not teach a generally accepted indicator of prevailing market price.

Furthermore, Applicant submits that there is no motivation to combine the teachings of Wagner with Alaia and to use Alaia's teaching of testing a bid to modify the Wagner bidding process.

The Examiner contends that it would have been obvious to one of ordinary skill in the art... "to modify Alaia's teaching of a predetermined price limitation to Wagner's bidding price to include a price improvement criteria which provides the relative price being relative to a generally accepted indicator of a prevailing market price for the benefit of satisfying any predetermined criteria set by the sellers." Applicant considers this motivation to be insufficient to suggest the combination of Wagner and Alaia.

First, the Examiner implies that it is required to modify Alaia. However, the Examiner has proffered no reasons or basis upon which to modify Alaia. Secondly, the Examiner contends that the combination of Alaia's modified teaching to Wagner would be for the benefit of satisfying any predetermined criteria set by the sellers. However, no such need for satisfying any criteria set by sellers is found in either the Wagner or Alaia reference, nor is it seen how such criteria is relevant to any of the teaching of these references. Therefore, it is submitted that there is no suggestion to combine these references.

Therefore, it is submitted that Applicant's claim 1 is neither described nor suggested by Alaia or by Wagner taken in combination with Alaia.

Applicant's claim 2 is patentable over Wagner and Alaia since the base reference Wagner does not describe exposure time feature of claim 1 and, hence, cannot describe matching a first one of the orders with the responses during the exposure time specified by the order.

Applicant's claim 3 is patentably distinct over the references since Wagner does not describe the exposure time feature of base claim 1 or responses during the exposure time. Moreover, Wagner and Alaia also do not describe matching the order to an optimal one of the responses. The Examiner considers it is proper to take official notice that comparing determining optimal bidding is old and well known. However, Applicant believes that the Examiner has not laid any foundation for such official notice. Specifically, Applicant would request the Examiner provide a reference, which shows that it is old and well-known to collect responses during an exposure time specified by an order. While it may be proper to take official notice of comparing and determining, it is not seen that the references describe collecting responses during an exposure time specified by the order and matching the order to an optimal one of the responses collected during the exposure time. Hence, claim 3 is further patentably distinct over the references.

Applicant's claims 4 and 5 are patentably distinct over the references for the reasons discussed in conjunction with their base claims.

Applicant's claim 6 is patentably distinct over the references for the reasons discussed in conjunction with claim 1 since there is no concept of an exposure time and, hence, no concept of expiring the order if the exposure time... has lapsed.

Applicant's claim 7 is patentably distinct over the claims since neither Wagner nor Alaia describe or suggest the action of entering predefined relative indications that correspond to a willingness to respond to orders if an order for the product arrives for exposure. Nor do such references suggest that the predefined relative indications specify a price relative to an indicator of a current prevailing market price.

The Examiner admits that Wagner does not describe this arrangement and relies upon Alaia's discussion of a price discovery mechanism at column 20, lines 63 to column 21, lines 5. However, Applicant submits that these teachings of Alaia also do not describe the elements of claim 7. Alaia describes a price discovery mechanism with respect to individual bidders that occurs prior to an online auction. However, the price discovery mechanism is to solicit a first round of pre-bids prior to deciding to conduct the online auction or to provide a series of bids that may arrive without solicitation from the buyer. These teachings do not suggest a predefined relative indication, which corresponds to a willingness to respond to orders and which specifies a price relative to an indicator of a prevailing market price. Therefore, claim 7 is patentably distinct over the references.

The Examiner's motivation to combine the teachings of Alaia and Wagner, is, "to incorporate the prebidding teaching of Alaia to Wagner for the benefit of helping buyer with a realistic bidding price" is insufficient since in the Wagner reference, orders are displayed and thus the buyer already knows what the direction of the market is. Whereas, in the instant invention, the predefined relative indications are entered irrespective of the existence of any orders. That is, as recited in claim 7, the predefined relative indication corresponds to a willingness to respond if an order for the product arrives for exposure. Thus, it would not be seen how the modification of Wagner by Alaia suggests this arrangement.

Applicant's claims 8 and 9 are distinguished over Alaia for the reasons discussed in conjunction with base claim 7. Furthermore, there is no suggestion in either reference of the

concept of a national best bid or offer price for a security. The Examiner takes the position this would be an obvious manner of design choice to modify the teachings of Wagner. Applicant disagrees. The Examiner set no basis to explain why a national best bid or offer is an obvious manner of design choice. Absent such a basis "design choice" is insufficient to support a combination of references for an obviousness-type rejection. Also, the Examiner's characterization that Applicant has not disclosed that the limitation solves any stated problem in a new or unexpected way... is inaccurate. Applicant has described in the specification that one of the features of the predefined relative indication and relative pricing is that a responder can set a relative price to provide price improvement relative to a prevailing price such as the national best bid or offer price. This provides a competitive price in relation to other reference prices. Customers or regulators can use this relative pricing to determine the extent to which the price provided has satisfied a broker's fiduciary or regulatory obligations of providing the best price possible in a multiple participant environment. This invention allows multiples parties to compete and respond to orders more quickly and on a continuous basis. Therefore, this rejection is improper.

Applicant's claims 12 and 13 are patentably distinct over the references for the reasons discussed in conjunction with their base claims since they do not describe features of the base claims nor features of the limitations recited therein.

Moreover, with respect to Applicant's claim 12, there is no concept in Wagner that the predefined relative indications are not displayed or exposed to the market unless matched and executed against the order... . The Examiner takes the position that official notice is taken that a sealed bid is old and well-known. The general concept of a sealed bid, however, is that the contents of the bid are not displayed to the public. However, the existence of the bid may be known. In claim 12 the public does not know of the existence of the predefined relative indications until the order is matched and executed. Also, the Examiner's position that official notice can be taken of sealed bids does not assist the Examiner in the rejection of claim 12 since such a feature is not claimed in claim 12. Accordingly, claim 12 is patentably distinct over the references.

Applicant's claim 14 is patentably distinct over the references since the references neither describe nor suggest an order specifying a minimal acceptable amount of price improvement nor

the concept of exposure time as mentioned above with regard to Applicant's claim 1. With respect to the aspect of price improvement, the Examiner admits that Wagner does not disclose such an arrangement and relies upon Alaia's testing bid process described above. Again, however, as Applicant has argued previously, Alaia also does not describe a price improvement mechanism and thus claim 14 is further patentably distinct over the references.

Claims 15-23 are patentably distinct over Wagner and Alaia for the reasons discussed of record and further since Alaia does not add any additional features to the teachings of Wagner for the reasons discussed above.

With respect to Applicant's claim 24, claim 24 is patentably distinct over Wagner taken in combination with Alaia since the references neither describe nor suggest an order specifying an amount of price improvement and exposure time and a response specifying a price improvement relative to the generally accepted indicator and matching the order and the response during the exposure time. These features of claim 24 make the claim patentably distinct over the references for the reasons generally discussed above.

Claims 25-32, which depend directly or indirectly from claim 24 are patentably distinct for the reasons discussed generally in conjunction with their base claim and for reasons discussed in conjunction with correspondingly similar claims above.

Independent claim 33 as discussed and dependent claims 34-39 are patentably distinct over the references for the reasons also discussed above.

With respect to Applicant's claim 40, claim 40 is patentably distinct for the reasons of record.

With respect to Applicant's claims 41-53, these claims are also patentably distinct for the reasons of record. In summary, claim 41, which recites the concept of a predefined relative indication is neither described nor suggested by Wagner as generally set out above. For example, the Examiner considers FIG. 5, item 48, column 12, lines 45-49 as teaching a predefined relative indication specifying a price relative to a current market price. However, no such teaching exists in Wagner. Rather, this teaching only describes the concept of a market order, which is stored in a queue. The order is stored in a queue until a matching order is found. These teachings do not correspond to a predefined relative indication that specifies a price relative to a current price (claim 41); that allows trading interest to remain undisclosed as to

existence until matched with an order (claim 42); that allows matching of an order with a predefined relative indication in accordance with exposure time specified by the order (claim 45); or entering a response specifying a price which can be relative or fixed, or entering an order that may have a condition seeking a relative price improvement relative to a generally accepted indicator of current prevailing market price (claim 48).

Applicant's remaining claims 55-64 are patentably distinct over the references for the reasons also discussed of record. In addition, these claims are patentably distinct for the reasons discussed above since the references neither describe nor suggest features of the invention such as a condition that seeks a specific minimum price improvement relative to a generally accepted indicator of a current prevailing market price and exposure time as recited in claim 55, for example, or receiving an order specifying a condition that seeks a minimum acceptable relative price improvement exposure time as recited in claim 64.

The Examiner rejected claims 21 and 50 under 35 U.S.C. 103 (a) as being unpatentable over Wagner and Alaia in view of Lupien.

Applicant submits that these claims are patentably distinct over these references for the reasons discussed in the prior response. Moreover, it is not seen how the Examiner can indicate that claim 50 is rejected because its similar to claim 3 but not having rejected claim 3 over these references.

The Examiner rejected claims 23 and 56 under 35 U.S.C. 103(a) as being unpatentable over Wagner in view of Silverman.

Applicant submits that these claims are also patentably distinct over the references for the reasons discussed in conjunction with the prior response.

The Examiner takes the position that Silverman discloses an anonymous matching feature and that anonymous matching feature when applied to Wagner's system renders claim 56 obvious. However, Applicant's claim 56 recites that the order is exposed to the market for an exposure time but that the exposure does not reveal the condition, which is attached to the order. Silverman has no such teaching. Rather, Silverman's teaching is for an anonymous trading system, which hides the identity of the bids and offers. However, reading through Silverman at the bottom of column 6, line 61 through column 7, line 30 it is clear that a client interacts with a book of bids and offers by hitting or taking transactions from a book. There is no condition,

which remains anonymous. Silverman does describe party credit limits, which are maintained anonymously by a host computer. However, the party credit limits are not conditions attached to an order. Rather, the party credit limits are conditions attached to a party. Therefore, there is no motivation and no teachings to modify Wagner with the teachings of Silverman to render claim 56 obvious. Hence, claim 56 is patentably distinct over the references.

Applicant has reviewed the references cited but not applied by the Examiner and considers those references taken separately or in combination as neither describe nor suggest Applicant's invention.

In view of the above amendment and remarks, it is submitted that claims 1-64 are patentably distinct over the art of record. Applicant requests entry of this amendment under the provisions of 37 CFR 1.116(a) since the amendment places the application in condition for allowance or better form for appeal by materially reducing the issues on appeal. This responses also amends the claims in a manner to clarify elements in the claims and does not add new limitations which require additional search by the Examiner. Accordingly, such entry is requested.

Attached is a marked-up version of the changes being made by the current amendment.

Applicant asks that all claims be allowed. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: _____

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Version with markings to show changes made

In the claims:

Please amend claims 1, 3 and 33 as follows

(Twice amended) 1. A method of auctioning products, said method executed over a distributed networked computer system, said method comprising:

entering an order for a product, the order specifying [specifying] a quantity of the product and an exposure time for which the order can be displayed for responses;

entering a response to an order, the response specifying [a price, which can be] a relative price with a price improvement with the relative price being relative to a generally accepted indicator of a prevailing market price, and quantity; and

matching the order with the response in accordance with the exposure time specified by the order.

(Twice amended) 3. The method of claim 1 wherein a plurality of orders and responses are entered, and wherein matching further comprises:

collecting responses during the exposure time specified by the order, and matching the order to an optimal one of the responses collected during the exposure time, which is determined in accordance with price and quantity specified in the optimal one of the responses.

(Twice Amended) 33. A system for auctioning financial products over a distributed, networked computer system, said system comprising:

a plurality of workstations for entering orders for financial products into the distributed, networked computer system, said orders specifying a quantity of the financial product and an exposure time for which the order [can remain active] is displayed for responses;

a plurality of workstations for entering responses to orders for the product, said responses specifying a price and quantity;

a server computer coupled to the workstations for entering the orders and the responses, said server computer executing a server process that for a first one of said orders,

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determines a match to said first order with the responses and contra-side orders during
[an interval determined by] the exposure time specified by said first order.